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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------|
| 09/160,635   | 09/24/1998  | VERNON WONG          | A-60179-2/DJ                 | 6584             |
| 7590   | 04/21/2004  |                      |                              |                  |
| Stephen Donovan<br>Tower Two, Seventh Floor<br>2525 Dupont Drive<br>Irvine, CA 92612 |             |                      | EXAMINER<br>WEBMAN, EDWARD J |                  |
|  |             |                      | ART UNIT<br>1617             | PAPER NUMBER     |

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

09/160635



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| APPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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3/26/04

DATE MAILED:

This is a communication from the examiner in charge of your application.  
 COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 3/8/04

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 10, 13, 16-20, 22-25, 28, 29 is/are pending in the application.  
 Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
☒ Claim(s) 19, 20, 22-25, 28, 29 is/are allowed.  
☒ Claim(s) 10 is/are rejected.  
☒ Claim(s) 13, 16-18 is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of Reference Cited, PTO-892  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Prosecution is reopened in view of a finding of a new rejection:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis et al.

Dennis et al. Teach a powder containing an active comprising up to 45% alginic acid and up to 35% gelling agent (abstract). Hydroxypropylmethyl cellulose is disclosed (column 5 line 31). Up to 57% active is specified (column 4 lines 17-19).

Fluphenazine and Thiorizidine are specified as tranquilizers (column 4 lines 30-31). Prolonged release is disclosed (column 2 line 65-column 3 line 1).

It would have been obvious to make a powder to achieve the beneficial effect of sustained release of Fluphenazine and Thiorizidine in view of Dennis et al. The examiner takes notice under MPEP 2144.03 that Fluphenazine is insoluble, reading on the elected active (see paper filed 2/22/00). As to the presence of a second active agent directed to the same treatment, such would be an obvious expedient In re Kerkoven 205 USPQ 1069 (CCPA 1980).

Claim 10 rejected. Claims 19, 20, 22-25, 28, 29 allowed.

Claims 13, 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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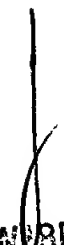
Art Unit: 1617

Any inquiry concerning this communication should be directed to Edward J.

Webman at telephone number 571-272-0633.

Webman/tgd

March 29, 2004

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500